SUPREME COURT, U.S.
FILED
DEC 3 - 2009

No. 09-417

IN THE

Supreme Court of the United States

CAROL MANIGAULT, Individually and as Administratrix ad Prosequendum and General Administratrix of the Estate of Jelani Darren Manigault, Deceased, and CAROL MANIGAULT and ANDREW MANIGAULT, Individually and as Parents and Natural Guardian of Jelani Darren Manigault,

Petitioners,

v.

CHRISTOPHER KING, HARRY MARTINEZ, FRED WILLIAMS, JUDD PETRONE, TOWNSHIP OF PRINCETON, MERCER COUNTY, STATE OF NEW JERSEY, PRINCETON TOWNSHIP POLICE DEPARTMENT, PRINCETON TOWNSHIP, JOHN/JANE DOES 1-10; ABC CORP. 1-10 AND/OR XYZ ENTITIES 1-10,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS CHRISTOPHER KING, FRED WILLIAMS, JUDD PETRONE, TOWNSHIP OF PRINCETON AND PRINCETON TOWNSHIP POLICE DEPARTMENT

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COUNTER STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether qualified immunity and summary judgment to the defendant police officers were properly granted, in light of the fact that there was nothing unreasonable in the manner in which the officers acted in confronting the plaintiffs' decedent and the fact that there was no "clearly established right" which was violated by the officers.

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FACTS RELEVANT TO THE ISSUES SUBMITTED FOR REVIEW

A. The Home Invasion And Attempted Murder

On January 23, 2003, at approximately 1:45 a.m., Mrs. Martha Sullivan Sword awoke to her dogs barking. As she was getting up, she heard the doorbell ring. (App. 184.1).

Mrs. Sword opened an upstairs window and called out, but all she heard was somebody crying and moaning. (App. 190). The person at her front door was Mr. Jelani Manigault, a mentally and/or emotionally disturbed man who had, less than an hour before, left Tenacre, a Christian Science facility located in Princeton, New Jersey where he was staying while undergoing psychiatric evaluation. (App. 173-174) He left the Tenacre facility in his mother's car and crashed into a tree near the Sword residence, which is located at 1036 Great Road, Princeton, New Jersey. (Id.).

Mrs. Sword woke Mr. William Sword and informed him someone was at the door. (App. 184.1) They then went downstairs together and, on their way, Mrs. Sword picked up the cordless phone from the second floor. (App. 190) Mr. Sword turned on the outside light and saw Mr. Manigault in only a tee shirt, moaning and saying incomprehensible things. (App. 184.1, 190)

As it was extremely cold outside, approximately six degrees, and as Mr. Manigault appeared to need help, Mr. Sword opened the door. (Id.) As Mr. Sword opened the door, Mr. Manigault pushed past Mr. and Mrs. Sword

and entered the house into the mudroom, which is attached to the kitchen. (Id.) As he entered the house, Mr. Manigault said, "Oh, I've really done it now. Oh, this is it." (App. 190)

As he walked from the mud room into the kitchen, Mr. Manigault became very agitated, his eyes were darting all over the room, and he began rummaging around in the kitchen drawers. (App. 184.1). Mrs. Sword went out of the kitchen and towards the back staircase to get her brother, Mr. Robert Sullivan, who was staying as an overnight guest at the house. (App. 190.1).

Mr. Manigault grabbed an eight-inch knife out of one of the kitchen drawers and attacked Mr. Sword with the knife. (App. 184.1). Mrs. Sword screamed and told her brother to go downstairs without getting dressed. Mr. Sullivan raced passed her on the stairs. (App. 190.1).

Mr. Manigault stabbed Mr. Sword fourteen times in total and inflicted eight major wounds. Mr. Sword suffered a punctured lung, broken ribs, and knife wounds to his chest, back, right arm, left shoulder, and left hand. (App. 184.1) As Mr. Sullivan came down the stairs, he saw Manigault stabbing Mr. Sword, so he grabbed Manigault around the throat and lifted him back off his feet. (App. 192-192.1).

Mrs. Sword called 9-1-1 and told the operator that an intruder was in their home, that her husband was being stabbed, and that her brother and her husband were fighting back against the intruder. (App. 190.1). During this struggle, Mr. Sword managed to hit Mr. Manigault on the head with a frying pan and temporarily

knock him out. (App. 186-186.1). Mr. Manigault came to, and exited the kitchen towards the stairs leading to the second floor. (App. 192.1-193).

Manigault still had the knife in his possession at this time. (App. 193). Mr. Sword approached Manigault from behind and again hit him on the head with the frying pan. Manigault went down unconscious for the second time. (Id.)

Mr. Sullivan again tried to administer aid to Mr. Sword's wounds and when he turned back around, Mr. Manigault was back in the kitchen with the knife, cutting his own wrists. (App. 193). As this was occurring, Mr. Manigault repeated, "Just kill me. Just kill me." (Id.; 190.1).

Mr. Sullivan was able to take the knife, and force Mr. Manigault back to the door and eventually outside. (App. 193.1). Once Mr. Manigault was outside, Mr. Sullivan sat the knife down on the counter, attempted to lock the mud room door leading outside, and then went around the house securing all of the other doors. (App. 193.1-194). However, when Mr. Sullivan returned to the kitchen he found that he had apparently not locked the door properly, as Mr. Manigault was back in the kitchen with the knife in his possession once again. (App. 193.1). Mr. Manigault stood in the kitchen, cutting his wrists with the knife, with blood from the wounds squirting on the ceiling. (Id.)

Mr. Sullivan yelled at Mr. Manigault to leave the house. (App 193.1) Mr. Manigault complied, walking outside with the knife in his hand. (Id.).

B. The Police Arrive

Sergeant Patrolman Judd Petrone ("Sgt. Petrone") responded to Mrs. Sword's 911 call, with information provided by the dispatcher that an intruder had a knife and was stabbing someone inside the home. (App. 197). When he was approximately a mile from the residence, Sergeant Petrone received an update from the dispatcher that the intruder had been subdued on the kitchen floor. (Id.).

Sgt. Petrone turned onto Great Road and saw a couple standing in the roadway who flagged him down. (App. 382). He assumed the couple had some connection with the home invasion. However, the couple had merely noticed the Manigault automobile, left after the accident on the side of the road. The couple knew nothing about the stabbing. (Id.)

Patrolman Martinez arrived and parked his vehicle in front of Sergeant Petrone's vehicle, a little closer to the accident scene. (Id.). Patrolman Martinez got out of his car and cleared the crashed vehicle to make sure no one was still in the vehicle. (Id.).

Both officers then preceded toward the Sword's driveway at 1036 Great Road. (Id.). Sergeant Petrone received a second update that the intruder was now outside the home and coming down the driveway. (Id.)

Patrolman Martinez was approximately thirty feet ahead of Sgt. Petrone when two other patrol cars arrived, driven by Patrolman Fred Williams and Patrolman Christopher D, King. (App. 198).

C. The Police Confront Manigault

Patrolman Martinez saw Mr. Manigault first. He ran toward him, yelling, "Drop the knife, police. Drop the knife." Sgt. Petrone followed in Patrolman Martinez's direction. (App. 198). Officer King left his vehicle and followed Officer Martinez and Sgt. Petrone into the yard. (App. 204).

The yard was unkempt and rustic, with stones and trees everywhere. It was dark out that night and there were no lights in the area. (Id.; 212).

When Sgt. Petrone first saw Mr. Manigault, they were approximately thirty apart. Sgt. Petrone illuminated Manigault with a flashlight, as it was "totally pitch dark [sic]." He had his revolver drawn. (App. 383-384; 391) Mr. Manigault had blood throughout his clothing and was standing still holding a knife with blood on it in his right hand at approximately head level. (App. 383-384).

Sgt. Petrone testified that Mr. Manigault was listening to their commands, but not obeying them. (App. 383). Patrolman Martinez was off to Sgt. Petrone's right and Sgt. Petrone positioned himself to the left of Mr. Manigault. (Id.). Patrolman Martinez and Sgt. Petrone continuously voiced their commands, loud enough for Corporal Williams to hear from the side of the road. (App. 384; 438).

Manigault was surrounded on three sides by Sgt. Petrone, Patrolman Martinez and Officer King. Petrone and Martinez were on the two sides of a roughly

U-shaped formation, with Officer King between the two other officers. Manigault was in the center, with the Sword house behind him, approximately fifty feet beyond the open end of the "U." (App. 385)

Mr. Manigault turned to face Officer King, putting his back to Patrolman Martinez and Sgt. Petrone. At this time, Petrone and Martinez made a move to get a little bit closer. Sgt. Petrone explained that Patrolman Martinez made a move to the right to get closer and that he had moved up from the left. (App. 384).

Sergeant Petrone testified that when Mr. Manigault turned his back to them they believed he was finally going to obey their commands so they made their move to get closer in an attempt to subdue him. (App. 384) Officer King did not move toward the subject, but maintained a distance of approximately twenty-feet. (App. 412-413, "I did not close the gap any farther from that 20 feet.")

Patrolman King was positioned between Sgt. Petrone and Officer Martinez and he heard the commands from both officers saying, "Stop, drop the knife." Patrolman King characterized Patrolman Martinez's commands as almost pleading with Mr. Manigault to obey. (App. 412).

All three officers continued to voice their commands while Mr. Manigault had his back to them in the belief that he was going to finally comply. (App. 384-385). However, instead of obeying the Officers' commands, Mr. Manigault then abruptly pivoted, turning completely around, and stopped, facing Patrolman King. (App. 385;

413) Mr. Manigault said, "go ahead and kill me," or "you're going to have to kill me," and, immediately after finishing the statement, charged Patrolman King. (App. 385; 413)

Sgt. Petrone testified that he could not get a clear shot at Mr. Manigault because Patrolman Martinez was in his line of sight, so he maneuvered to get into position. Patrolman Martinez maneuvered to get behind Mr. Manigault to put himself in a position to stop the threat. (App. 386).

When Manigault broke into a run with the knife in his hand, Patrolman King backed up to maintain a twenty-foot distance between himself and Mr. Manigault. (App. 414). Patrolman King took a few steps back before tripping on a tree stump. He estimated that Mr. Manigault closed to about ten to fifteen feet. (Id.)

Patrolman King fell and landed on his buttocks and lower back, but maintained a seated position. He kept his head up and raised one of his feet as a reaction to defend himself, as he yelled, "Stop." (App. 414). Mr. Manigault did not respond to Patrolman King's commands and continued to charge him with the knife. (Id.).

Patrolman King realized that Mr. Manigault was not going to stop and his only course of action was to discharge his firearm at Mr. Manigault. (Id.). When Mr. Manigault was only six feet away, Patrolman King fired his weapon and hit Mr. Manigault in the pelvic region. (App. 414-415).

The impact of the bullet caused Mr. Manigault to change position such that Patrolman King momentarily lost site of him. (App. 415). Patrolman King explained that he was illuminating Manigault with his flashlight and when he discharged his weapon he had difficulty determining where Manigault had gone. (Id.) Patrolman King testified that not even a second later, almost instantaneously, Patrolman Martinez fired two rounds at Mr. Manigault. (App. 386; 416; 439).

Sgt. Petrone indicated the subject was down, instructed Patrolman King to disarm the suspect and check his vital signs, directed Patrolman Martinez to go inside the house and assess the situation there, and directed Patrolman Williams to secure the scene at the end of the driveway. (App. 388; 416; 440). Williams did not participate in surrounding Manigault, nor did he fire his weapon. (App. 198; 438-439) When the shooting occurred, Officer Williams was approximately thirty to fifty feet away, but he was able to see Mr. Manigault. (App. 439).

Patrolman King removed the knife from Mr. Manigault's right hand and placed it on a nearby tree stump. He then checked Mr. Manigault's carotid pulse and looked, listened and felt for signs of breathing. He found no signs of life. (App. 417).

Sgt. Petrone then made arrangements over the radio to secure the area. (App. 388).

D. The Aftermath Of The Shooting And The Lawsuit

Subsequently, the Mercer County Prosecutor's Office investigated the shooting death of Mr. Manigault and concluded that the officers' use of force was entirely proper. (App. 213-215) Their report noted, "[t]he investigation of this case, considering all of the facts and circumstances, indicates that the use of deadly force by Officers Martinez and King was justified. Furthermore, a review of the Mercer County Use of Force Policy indicates no violation of the policy." (App. 214).

The plaintiffs – the parents and guardians of the decedent – filed a complaint against the four officers on the scene, as well Princeton Township and the Princeton Township police.(App. A32 et seq.) The plaintiffs alleged a claim under 42 U.S.C. §1983 as well as pendent State claims.

After discovery ensued, a motion for summary judgment was filed by the defendants against the plaintiffs. (App. 73 et seq.) The defendants argued that there was no genuine issue of material fact and that the defendants were entitled to judgment as a matter of law. On August 18, 2008, the Hon. Anne E. Thompson, U.S.D.J. entered her order and opinion granting the motion for summary judgment (later amended). (App. 1-24)

On appeal, the plaintiffs have argued that it was erroneous to grant summary judgment to Officers Martinez and Petrone because, the plaintiffs assert, these officers were not entitled to qualified immunity. On July 13, 2009, after full briefing, a panel of the Court

of Appeals for the Third Circuit consisting of the Hon. Dolores Sloviter, U.S.C.J., the Hon. Thomas Ambro, U.S.C.J., and the Hon. Kent Jordan, U.S.C.J., affirmed the grant of summary judgment, finding that the officers were fully protected by qualified immunity. (Petition App. 1a-7a)

ARGUMENT AGAINST GRANTING THE PETITION

A. The Considerations Preferred By This Court When Granting a Petition Are Not Present Here

Rule 10 of the Supreme Court Rules details the reasons which this Court considers compelling when determining whether to exercise its prerogative and issue a writ of certiorari. Those reasons include when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter," or when "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court." SUP. CT. R. 10(a), (c).

The plaintiff asserts that a writ of certiorari should be granted so this Court can examine, in general, the standards to be applied to the use of force against a "mentally distraught" individual, and, in particular, the standards as they were applied in this case.

However, these reasons do not provide a sufficient basis for certiorari. The plaintiff has not provided any guidelines as to how the generally applicable law used in connection with any use-of-force analysis should be

modified when the person who the officer faces is mentally disturbed. The "objective reasonableness" test of *Graham v. Connor*, 490 U.S. 386 (1989) already considers the facts and circumstances facing the officer. That a person is mentally disturbed does not make the threat posed by that person any less real or urgent, so it is unclear what, in addition to the *Graham* analysis, would be appropriate.

Further, as applied to this case in particular, the plaintiff notes the "obvious mental condition of Jelani [Manigault]" when the officers encountered him. (Cert. Petition at 6.) However, the officers first encountered Manigault in the dark yard in front of the Sword residence, by the light of flashlights. Even considering the fact that Manigault wore no coat and had wounds on his arms, the plaintiff's assertion that Manigault's mental condition was "obvious" is absurd. Further, even if the officers knew that Manigault had mental illness, there was nothing in the manner they acted which constituted excessive force, given the actions that Manigault, himself, had undertaken.[1]

As such, the petition for writ of certiorari should be denied.

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1. The plaintiff also presents an argument that the plaintiff had a "fundamental right" to obtain the testimony of Officer Martinez. This argument will, presumably, be addressed by Officer Martinez's counsel.

B. The Officers Are Entitled To Qualified Immunity.

Further, the petitioner's assertion that the Third Circuit's decision in this case was a miscarriage of justice is wrong. However, affirming the grant of summary judgment was not a miscarriage of justice; indeed, that decision was not even erroneous.

The officers in this case would be entitled to qualified immunity for their exercise of force "insofar as their conduct does not violate clearly established statutory or Constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

In this case, there was no violation of any constitutional right. A claim of excessive force under the Fourth Amendment must be analyzed by the objective reasonableness of the action. The test asks whether, under the totality of the circumstances, "the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivations." *Graham*, 490 U.S. at 397. If a use of force is objectively reasonable, then a bad faith motivation is immaterial; also an officer's good faith is irrelevant if the use of force is objectively unreasonable. *Id.*, at 396.

Furthermore, the facts of the case must be viewed in proper perspective—that is, from the point of view of the officer on the scene—and not retrospectively:

> the 'reasonableness' of a particular use of force must be judged from the perspective of a

> reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

Graham, 490 U.S. at 396-397.

Factors to be considered in making a determination of reasonableness include 1) the severity of the crime at issue, 2) whether the suspect poses an immediate threat to the safety of the officers or others, 3) whether he actively is resisting arrest or attempting to evade arrest by flight, as well as 4) the possibility that the person subject to the police action are themselves violent or dangerous, 5) the duration of the action, where the action takes place in the context of perfecting an arrest, 6) the possibility that the suspect may be armed, and 7) the number of persons with whom the officer must contend at one time. See, *Graham*, 490 U.S. at 396, 109 S.Ct. at 1872.

An analysis of the *Graham* factors, applying the totality of the circumstances, shows that Sgt. Petrone and Officer King acted entirely reasonably. 1) The crimes at issue, attempted murder, assault, home invasion and trespass, were severe to the extreme. 2) The threat which the decedent posed to the police and others was manifest in his attack on the Swords and his potentially murderous attack on Officer King. 3) The suspect was clearly resisting arrest, as the officers tried for many minutes to convince the decedent to put his weapon down. He refused to disarm

himself and, instead, charged Officer King. 4) The possibility not only existed that the decedent could become violent and dangerous, he actually was violent and dangerous. 5) The duration of the action complained of by the plaintiffs is inapplicable, as the arrest was never perfected. 6) The decedent was clearly armed and brandished his weapon openly before the defendants. 7) The decedent was the only person the officers had to deal with at this time.

Taking these factors into consideration, the only sensible conclusion is that Sgt. Petrone acted reasonably when he stepped toward Manigault at a point where it appeared that Manigault might start acting in compliance with the directions given him by the police and that Officer King acted reasonably when he fired upon Mr. Manigault. These action were objectively reasonable, given the danger Manigault posed and the apparently momentary opening presented to Sgt. Petrone to resolve the situation without further bloodshed.[2] Officer King's actions were, beyond doubt, reasonable, as he did not move closer to Manigault and only acted against him when he charged Officer King brandishing a deadly weapon.

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2. Further, there is absolutely nothing in the record to remotely suggest that the actions of the officers in moving closer to Mr. Manigault prompted Mr. Manigault to attack Officer King. Mr. Manigault's back was turned to the officers, which led them to believe that Manigault was going to obey the commands he was given. (App. 384.) Instead, he raised his knife and began toward Officer King. There is simply nothing on the record to support the plaintiffs' argument that the actions of the officers in moving closer to Mr. Manigault prompted Manigault to attack Officer King.

The plaintiff's argument asserts that the totality of the circumstances in this case should lead this Court to find that the deadly force was excessive because the officers, by "surround[ing] Manigault] and clos[ing] in on him to a distance of between 10 and 12 feet, contrary to the police department's policy and procedure of maintaining a distance of at least 21 feet from a suspect . . . undoubtedly precipitated the alleged perceived need for defendant police officers['] use of deadly force." (Petition at 6-7)"

However, as the Third Circuit Court of Appeals noted, even if it were true that the officers violated departmental policy, this did not constitute a constitutional violation nor did it prevent the application of qualified immunity. *See, Collins v. City of Harker Heights*, 503 U.S. 115, 119 (1992); *Davis v. Scherer*, 468 U.S. 183, 194 (1984).

Given all of the facts of this case – from the knowledge that the decedent had brutally attacked at least one person without provocation, was bloodied and brandishing a knife, and failed to drop the weapon or otherwise respond to the officers' instructions – it would be unwarranted to conclude that the actions of any of the defendants in this case was anything but objectively reasonable under the circumstances.

As such, the grant of summary judgment was proper and it is respectfully requested that this Court deny the petition for certiorari.

CONCLUSION

For all of the foregoing reasons, this Court is respectfully requested to deny the plaintiff's Petition for Writ of Certiorari.

Respectfully Submitted,

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